



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 32289656

Date: JULY 26, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a singer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

## I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), including items such as awards, published material in certain media, and scholarly articles. If those standards do not readily apply to the individual’s occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner graduated from the [ ] of Music in 2012, and began releasing albums in 2013. Since 2017, the Petitioner has spent much of his time in the United States as an F-1 nonimmigrant student, studying at the [ ] and teaching at a music school in [ ] California in optional practical training permitted by his F-1 status.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed to have satisfied five of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others; and
- (v), Original contributions of major significance.

The Director concluded that the Petitioner had not met any of the claimed criteria. On appeal, the Petitioner maintains that he meets the four criteria relating to prizes, memberships, published material, and judging. The Petitioner does not contest the Director's conclusions regarding contributions, and therefore we consider him to have waived appeal on that issue.<sup>1</sup>

Upon review of the record, we agree with the Director that the Petitioner has not satisfied the criteria claimed. We will discuss the criteria below.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).*

The Petitioner initially submitted photographs of performances and publicity events, web addresses for articles, and uncertified translations of several articles.

---

<sup>1</sup> *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

In a request for evidence (RFE), the Director stated that the Petitioner submitted “documents . . . that are not translated properly and/or do not come from legitimate media.” The Director stated:

Be advised that we do not view information disseminated through 21st Century Economic Report (21shijijingjibaodao), admaimai.com, Baidu, Baike, China.com, ChinaDaily.com, Dianping, FengHuang (ifeng.com), NetEase (163.com), Sina, Sohu, Tencent (QQ.com), Toutiao, Xinhuanet, YouKu, and their like as published material, because they are web portals or distribution platforms open to the public through which anyone can self-publish information. Such evidence will not be considered or discussed.

The Director also stated that, if the Petitioner chose to submit additional published materials, the Petitioner must establish the circulation of the media in which the materials appeared.

In response, the Petitioner protested the Director’s exclusion of material from the named websites. The Petitioner also submitted additional published material. The Petitioner did not submit the requested circulation information.

In the denial notice, the Director repeated the assertion that evidence from certain websites would not be accepted. The Director also noted that some materials do not include the information required by the regulations, such as author attribution. The Director stated: “To qualify as major media, the publication should have significant national or international distribution with circulation (online or in print) or viewership high compared with other statistics.”

On appeal, the Petitioner argues that the Director did not justify the refusal to consider content from the listed websites. The Petitioner asserts that, while “some of the websites listed as excludable are small and maybe infamous websites that carry little probative value,” others are “big national websites” which “carry probative value because . . . it’s impossible to buy spaces for personal promotion.”

In the case of *Baidu Baike*, the submitted printouts include a disclaimer that reads: “Encyclopedia entries can be edited by everyone . . . there is no official . . . editor.” There are no assurances about the reliability of the content from open, user-edited Internet sites. *See Badasa v. Mukasey*, 540 F.3d 909, 910 (8th Cir. 2008). But we agree with the Petitioner that the Director did not adequately explain the conclusion that the other named websites are all open, user-edited websites.

Nevertheless, the burden is on the Petitioner to establish that the submitted published material meets applicable requirements. In evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media). 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>.

In this instance, the Petitioner submitted examples of published material, but did not submit the necessary background information to establish that the published material appeared in professional or major trade publications or other major media, even after the Director specifically requested that information.

The Petitioner states, on appeal, that some of the websites are “national website portals,” but statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). The Petitioner cannot meet his burden of proof simply by asserting that the published material appeared in major media.

On appeal, the Petitioner submits new printouts showing that an album that he released in 2023 is available on online streaming services. A Spotify artist page indicates that he has “224 monthly listeners.” *Shoutout LA* and *CanvasRebel* published interviews with the Petitioner in late 2023 and early 2024. All of these materials date from after the petition’s August 2022 filing date, and therefore they cannot establish that the Petitioner met all eligibility requirements as of the filing date as required by 8 C.F.R. § 103.2(b)(1). As such, these newly submitted documents are not material to the appeal, and we need not consider whether these new submissions are published materials about the Petitioner that appeared in professional or major trade publications or other major media.

Because the Petitioner has not submitted circulation data for the publications, the Petitioner has not established that the published material appeared in professional or major trade publications or other major media as the regulatory language requires. Therefore, the Petitioner has not satisfied the requirements of this criterion.

*Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner submitted copies of certificates, some of them in English, others in Chinese with translations, and photographs of events and plaques. The Petitioner claimed to have received several more “regional, national and international awards” between 2008 and 2019. The Petitioner claimed that “many of these rankings are without an official award, certificate, etc.” A printout from *Baidu Baike* lists several of the claimed awards. As noted above, *Baidu Baike* is a user-edited online encyclopedia that includes a disclaimer regarding the reliability of the information on the site.

In the RFE, the Director asked for more information about the claimed awards, such as the criteria used to grant them and evidence of their national or international recognition. The Director advised that local media coverage is not sufficient to establish such recognition.

In response, the Petitioner submitted printouts of identically worded articles from *World Journal* and *Yahoo! News*, indicating that the Petitioner placed fourth among five finalists in [redacted] described as “the first summer singing competition that gathers music lovers from overseas Chinese students in the United States.”

The Director denied the petition, concluding that the Petitioner did not establish “the national or international significance of the awards or prizes in the field.” Regarding the [redacted] competition, the Director stated that the Petitioner “submitted identical articles displayed on worldjournal.com and news.yahoo.com. However, as both sites are web portals, they have no probative value for this proceeding.”

On appeal, the Petitioner asserts that “*Worldjournal* is a reputable Chinese newspaper across North America available in all the major cities from Coast to Coast.” The Petitioner also states that the *Yahoo!*

*News* article was “not given sufficient weight.” The Director is correct that the *Yahoo! News* article shares identical wording with the *World Journal* article. The record does not indicate that the *Yahoo! News* article was the result of independent reporting, rather than an aggregation that republished the *World Journal* article.

As noted above, the Petitioner’s statements in the appeal brief are not evidence. More importantly, the submitted articles do not establish that the Petitioner received a nationally or internationally recognized prize or award for finishing in fourth place in the [ ] competition.

The Petitioner has submitted evidence that he received prizes and awards, but has not submitted the required evidence to establish their national or international recognition. Therefore, the Petitioner has not met the requirements of the criterion.

*Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*  
8 C.F.R. § 204.5(h)(3)(ii).

A translated certificate indicated that the Petitioner was appointed as a standing council member of the [ ] Music and Literature Association from July 2016 to July 2021. An English-language printout from the user-edited online encyclopedia *Baidu Baike* called the association “a voluntary group of accomplished music literature workers in [ ]”

In the RFE, the Director stated that “being appointed to a council is not a membership in an association. Additionally, the appointment was expired at the time of filing.” The Director requested “evidence of continued membership, information to establish that the individuals who review prospective members’ applications are recognized as national or international experts in their disciplines or fields and the section of the association’s constitution or bylaws that discusses the qualifications required by the review panel of the association.”

In response, the Petitioner stated that he allowed his council membership to lapse because “maintaining a membership in China would be impractical.” The Petitioner asserted that he has applied to renew his membership “and is waiting for a certain card to arrive.” The Petitioner also submitted evidence that he became a member of the Music Teachers Association of California in March 2023, several months after the petition’s August 2022 filing date. The Petitioner did not submit evidence of the membership requirements of either association.

In denying the petition, the Director stated that the Petitioner had not submitted the required evidence to show the associations require outstanding achievements of their members, as judged by recognized national or international experts. The Director also repeated the observation that the Petitioner’s council appointment had lapsed, and the assertion that “being appointed to a council is not a membership in an association.”

On appeal, the Petitioner states that the expiration of his membership in the [ ] Music and Literature Association is irrelevant to his eligibility, because it is his *admission* to the association that established his status in the field. But the Petitioner has not submitted the required evidence to show that

the association possesses the membership requirements that the regulations demand. As discussed above, the *Baidu Baike* article in the record lacks weight because any user can change the contents of such an article. Even then, the reference to association members as “accomplished” is not sufficient to show that the association requires outstanding achievements as judged by recognized national or international experts. The *Baidu Baike* article instead limits the organization’s scope to

The Petitioner has not established that he holds any memberships that meet the regulatory requirements. Therefore, the Petitioner has not satisfied the requirements for the criterion.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criterion at 8 C.F.R. § 204.5(h)(3)(iv), pertaining to judging the work of others, cannot change the outcome of this appeal. Therefore, we reserve this issue.<sup>2</sup>

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten lesser criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown a degree of recognition of his work that indicates the required sustained national or international acclaim and demonstrates a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The Petitioner has shown that he has released recordings, won prizes, and achieved some degree of media coverage, but he has not submitted the supporting evidence necessary to satisfy the regulatory criteria and establish that his recognition rises to the level of sustained national or international acclaim.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

**ORDER:** The appeal is dismissed.

---

<sup>2</sup> *See INS v. Bagamashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).